

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 93-520-T - ORDER NO. 94-262^{VC}

APRIL 7, 1994

IN RE: Application of Two Men and A Truck of)	
Greenville, Inc., 32 Hampton Ave.,)	ORDER
P.O. Box 5584, Greenville, SC 29606,)	DENYING
for a Class E Certificate of Public)	APPLICATION
Convenience and Necessity.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Two Men and A Truck of Greenville, Inc. (the Applicant) for a Class E Certificate of Public Convenience and Necessity authorizing it to transport property as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-211(14):
Between points and places in South Carolina.

NEW FURNITURE AND APPLIANCES, FOR MANUFACTURERS AND
RETAIL OUTLETS: Between points and places in South
Carolina.

This Application was filed pursuant to S.C. Code Ann. §58-23-40 (1976).

Subsequent to the initiation of this proceeding, the Executive Director of the Commission instructed the Applicant to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the State of South Carolina. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and time in which to file the appropriate pleadings. The Notice of

Filing was duly published in accordance with the instructions of the Executive Director. Petitions to Intervene were filed by Tru-Pak Moving Systems, Forest Hills Transfer & Storage, Inc., Austin Moving & Storage Co., Inc., Bland Moving & Storage Co., Inc., Arrow Moving & Storage, Inc., Greenville-Spartanburg Moving & Storage Co., Inc., Smith Dray Line & Storage Co., Inc., Carey Moving & Storage of Greenville, Inc., and Carey Moving & Storage, Inc.

A public hearing was held at the offices of the Commission on March 14, 1994, with the Honorable Henry G. Yonce presiding. The Applicant was represented by David D. Armstrong, Esquire. Arthur G. Fusco, Esquire, represented Intervenor Austin Moving & Storage Co., Inc., Bland Moving & Storage Co., Inc., Arrow Moving & Storage, Inc., Greenville-Spartanburg Moving & Storage Co., Inc., Carey Moving & Storage of Greenville, Inc., and Carey Moving & Storage, Inc. Intervenor Smith Dray Line & Storage Co., Inc. was present at the hearing but did not participate in the proceedings. Intervenor Tru-Pak Moving Systems and Forest Hills Transfer & Storage, Inc. did not attend the hearing. The Commission Staff was represented by Florence P. Belser, Staff Counsel.

Testifying for the Applicant were Larry Moore, William Martin, Jim Pierson, Carolina Fratturo, James E. Woodside, Gerald K. Howard, and Yvonne Simpson. Robert Clusterman and John Austin testified for the Intervenor.

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. South Carolina Code Ann. §58-23-330 (Supp. 1993) provides as follows:

[a]n applicant applying for a certificate ... to operate as a motor vehicle common carrier may be approved upon showing ... that the applicant is fit, willing, and able to perform appropriately the proposed service. If an intervenor shows or if the [C]ommission determines that the public convenience and necessity is being served already, the [C]ommission may deny the application.

2. 26 S.C. REGS. 103-134(1)(A)(1)(Supp. 1993) provides, in relevant part, that the Commission use the following criteria to determine whether an applicant is fit, willing, and able to provide the requested service:

- (a) FIT The applicant must demonstrate or the Commission determine that the Applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T, SCDHPT, and PSC safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agrees to operate in compliance with these statutes and regulations.
- (b) ABLE The applicant should demonstrate that he has either purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is applying. The applicant should also provide evidence in the form of insurance policies or insurance quotes indicating that he is aware of the Commission's insurance requirements and the cost associated therewith.
- (c) WILLING Having met the requirements as to "fit and able", the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

3. The Application in this Docket indicates that the

Applicant is a South Carolina corporation. The testimony of Larry Moore, general manager and part owner of the Applicant, indicates that the Applicant has received a satisfactory safety rating and that there are no outstanding judgments against the Applicant. The financial information contained in the Application and the testimony from the hearing indicate that the Applicant is financially stable. Attachments to the Application and the testimony of Mr. Moore and Jim Pierson reveal that the Applicant has the necessary equipment to provide the service for which it is applying and that the Applicant is aware of the Commission's insurance requirements. According to the Application and the testimony of Mr. Moore, the Applicant is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina, and, if granted authority, agrees to operate in compliance with these statutes and regulations.

4. Mr. Moore testified that the Applicant has been in operation since April 1, 1992. Mr. Moore stated that he is the general manager of the business and that he has twenty-three (23) years experience in the motor carrier business. According to Mr. Moore, the Applicant is attempting to serve a "niche" in the moving business between the "major movers and the 'do-it-yourself' movers." Mr. Moore testified that the Applicant is not interested in "large" moves and that the Applicant is not equipped to handle moves much larger than 8,000 pounds, or the approximate equivalent of a three bedroom house. Mr. Moore also testified that the ideal "niche" move is the equivalent of two (2) bedrooms or approximately

5,000 pounds with the move being thirty (30) miles or less and taking about one-half day for the move.

5. Mr. Moore also stated that when the Applicant began business in April 1992 he was under the impression that they could perform "local" moves without authority. Upon learning that the Applicant needed authority, Mr. Moore testified that the Applicant operated under a lease agreement with City Moving and Storage, Inc. (City) from Greenville. Mr. Moore also testified that the Applicant's lease with City ended when the Applicant learned that City's authority was canceled. However, it also appears that the Applicant continued to operate under this lease agreement after City's authority was canceled. Mr. Moore testified that in August of 1993 he learned that City's certificate of authority was canceled. [The Commission takes notice of its prior Order No. 92-1047, dated December 17, 1992, which canceled the Certificate of Authority of City Moving and Storage, Inc. pursuant to a Rule to Show Cause hearing for failure to maintain insurance.] Further, Mr. Moore testified that the Applicant made some "moves that we shouldn't have made" after he learned that City's authority was canceled.

6. The Applicant placed into evidence a packet of customer response cards which contained favorable comments regarding the Applicant's past business experiences. On cross-examination, Mr. Moore admitted that the Applicant had received other customers response cards which were not included as part of the hearing exhibit and further admitted that the Applicant has received customer response cards which contained complaints or unfavorable

comments.

7. Jim Pierson offered testimony concerning the Applicant's insurance policies. Mr. Pierson stated that he is a licensed insurance agent in South Carolina and that he wrote the insurance for the Applicant. According to Mr. Pierson, the Applicant has insurance coverage which meets and exceeds the insurance limits required by law.

8. Several former customers of the Applicant testified regarding their experiences with the Applicant. Carolina Fratturo testified that she had used the Applicant to help with a move in connection with the Greenville Festival of Trees. Ms. Fratturo stated she was very satisfied with the Applicant's work.

James E. Woodside testified that he is the Applicant's landlord and that he used the Applicant to perform a move for him approximately a year ago. Mr. Woodside further testified that this move was not within the city limits of Greenville.

Gerald K. Howard testified that the Applicant has made three moves for him. Two of the moves occurred in March 1993 with one move from Greenville County to Simpsonville and the other move from within the city of Greenville to Simpsonville.

Yvonne Simpson testified that she hired the Applicant for a move involving the Greater Greenville Chamber of Commerce. Ms. Simpson testified that the Applicant did a good job and that she would recommend the Applicant to others.

9. Bob Clusterman, President of Greenville-Spartanburg Moving & Storage Co., Inc., and John Austin, President of Austin Moving & Storage Co., Inc., testified on behalf of the Intervenors. Both

witnesses testified that they believe the public convenience and necessity is presently being met. Mr. Clusterman testified that the local moves were important to his company as the local moves helped meet his overhead. Mr. Clusterman also testified that in 1985 he had five (5) pieces of rolling stock for intrastate moves but is now down to three (3) pieces for intrastate moves due to decrease of business. Mr. Austin testified that he has had to sell equipment during the last five years due to shortage of business, and he also testified that he has more equipment today than he can use.

CONCLUSIONS OF LAW

1. Although the Applicant has demonstrated that it is willing and able to provide the Class E service for which it seeks authority, this Commission holds that the Applicant has not demonstrated that it is fit, as per 26 S.C. Regs. 103-134(1)(A)(1)(a) (Supp.1993). Although the Application and the testimony seem to indicate that the Applicant was familiar with all statutes and regulations governing for-hire motor carrier operations in South Carolina, and while the Applicant apparently agreed to operate in compliance with those statutes and regulations, it is clear upon examination of the testimony from the hearing that the Applicant was not familiar with, or either intentionally disregarded, the statutes and regulations regarding for-hire motor carriers. The record clearly shows that the Applicant completed several illegal moves without authority in and around the Greenville area. One of these illegal moves even occurred the week before the hearing on this matter. The Applicant

attempted to show that several of these moves were completed under an apparent lease agreement with City Moving and Storage of Greenville, but by the Applicant's own admission, some of these moves were completed after City's authority was canceled. The Commission cannot tolerate violations of its regulations, and therefore finds that the Applicant has not demonstrated its fitness to provide the requested service. Since the Commission has found that the Applicant cannot meet one of the three requirements for a Certificate as provided in S.C. Regs. 103-134(1)(A) (Supp. 1993), the Commission must deny the Application.

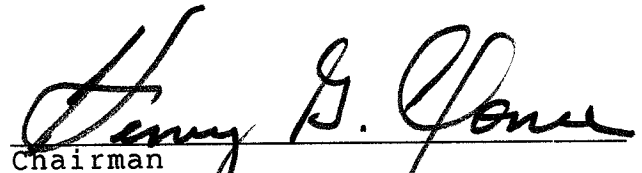
2. Considering the Commission's findings and conclusion above, the Commission takes no position on whether or not the Intervenors showed that the public convenience and necessity is being served.

IT IS THEREFORE ORDERED THAT:

1. The Application of Two Men and A Truck of Greenville, Inc. for a Class E Certificate of Public Convenience and Necessity is hereby denied.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)